

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 25, 2012 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter dated June 27, 2011 from an orthopedic surgeon 'To Whom It May Concern' stating in part that the appellant has suffered a right acromio-clavicular separation and it has degenerated to right acromio-clavicular joint arthritis due to instability; "I think this will be an ongoing disability until it is surgically dealt with; he will be unable to do manual labour without pain unless corrected";
- 2) Medical Report- Employability dated November 9, 2011 completed by an orthopedic surgeon and stating in part that the appellant's primary medical condition is right shoulder AC joint separation with a date of onset of October 17, 2008 and a secondary medical condition of degeneration of right AC joint with a description of the overall medical condition as "moderate" as opposed to mild or severe. The associated restrictions are described as: "pain in right shoulder with strenuous or repetitive, max. 5 lbs. at this time;"
- 3) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated February 17, 2012 completed by an orthopedic surgeon and stating in part that the appellant's primary medical condition is right AC joint degeneration with date of onset October 17, 2008 with a prognosis of an expected duration of the medical condition as 2 years or more "without treatment" and restrictions described as "...can't do anything strenuous with right shoulder, can't lift more than 5 lbs., can't do overhead activities."
- 4) Person With Disabilities (PWD) Application: applicant information dated May 18, 2012, physician report dated May 7, 2012, and assessor report dated May 7, 2012 and undated typewritten pages of 'Clarification of Doctor's Notes for Ease of Reading';
- 5) Letter dated June 28, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 6) Request for Reconsideration.

Prior to the hearing, the appellant's advocate provided a written submission dated August 23, 2012 regarding the admissibility of additional evidence, namely:

- 1) Letter dated August 10, 2012 from the appellant's family physician which states in part that the appellant suffers from right AC joint separation and depression, these conditions are severe and will likely continue for at least 2 years. The appellant is directly and significantly restricted in his ability to perform daily living activities as a result of these conditions. Due to the appellant's AC joint separation most daily living activities must be performed with only his left arm and all tasks noted as taking significantly longer on the original application take roughly 3 to 5 times longer than usual. The appellant requires continuous assistance with the tasks referred to above; this is due to the accumulation of the additional time needed to complete each activity resulting in the appellant not having sufficient time to complete essential daily living activities, thus he requires continuous assistance with at least some daily living activities. The appellant also has continuous severe social functioning restrictions resulting from hostility difficulties and depression. For instance, his ability to develop and maintain relationships and to interact appropriately with others are severely and continuously restricted and would benefit significantly from assistance and supervision; and,
- 2) American Time Use Survey.

The advocate provided a written submission at the hearing, which was accepted by the panel as argument. The ministry did not object to admission of the additional documents into evidence but raised a question about the relevancy of the American Time Use Survey. The advocate stated that he does not intend to refer to the Time Use Survey and the panel, therefore, did not admit it into evidence. The panel reviewed the letter and admitted it, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further information regarding the appellant's diagnosed condition and being in support of information that was before the ministry on reconsideration. The appellant consented to the attendance of a ministry observer at the hearing.

At the hearing, the appellant stated that he has taken anti-inflammatory medications but they are not effective as they give him a false idea that he can move his arm and then he will experience increased pain. The appellant stated that the orthopedic surgeon has said that surgery is not recommended, he has not said that surgery would be effective. The appellant stated that he cannot perform activities that require two arms, that he could use public transportation and hold on with his left hand but then he would not be able to protect his

right arm or use his right arm if needed. The appellant stated that the physician who wrote the August 10, 2012 letter is a general practitioner while the Medical Reports were completed by the specialist in bones and ligaments, an orthopedic surgeon. In response to a question, the appellant stated that his restriction with remaining seated less than 1 hour is because the AC joint involves ligaments that are horizontal stabilizers that hold the shoulder in place and whenever the body leans forward it becomes painful as the clavicle presses into the flesh. The appellant clarified that he completed section E of the physician report but that this information is reiterated in the assessor report and the physician's signature on the report shows his endorsement. The appellant stated that he sometimes wears a clavicle brace which tries to fulfill the same function as that ligaments and reduces the pain but it is uncomfortable because it restricts blood flow and, because of this, he is not supposed to wear it to bed. The appellant stated that it has been a long time since his injury occurred, since 2008, and the orthopedic surgeon has discussed 10 different surgery options but none are reliable.

In his self-report included in the PWD application, the appellant explains that the AC joint is a ligament that attaches two bones, the acromion and the clavicle; whenever the arm moves forward, the joint is supposed to stabilize the shoulder. The appellant states that the ligament is so severely damaged in his shoulder that movement displaces the clavicle and this is extremely painful and even during inactivity the pain will persist for hours. The appellant states that if his body leans forward, this puts forward stress on the joint and results in pain. The appellant states that he supports his arm with a sling during inactivity, uses a clavicle brace to limit his range of motion, and places a firm pillow under his right elbow while sitting. The appellant states that he has a backpack to carry things and he relies on friends, family and the community in cases where he is unable. The appellant states that this disability effects all areas of his life, the most important being all physical forms of employment and recreation are no longer possible. All social interactions are discouraged by the fear of pain, from shaking hands to physical intimacy. The appellant states that he is right-handed and writing is now painful. Washing, grooming, hygiene and toiletries were all right-handed and he tries to compensate with the left but it is untrained, clumsy, slower and inefficient at complex motor skills like brushing teeth and writing. The appellant states that having to reach forward/downward to wear socks/boxers/pants is painful and he manages with his left, which is slower. The appellant states that he avoids all forms of right arm movement such as lifting, reaching, carrying, twisting, and pulling.

The appellant states that activities like sweeping, mopping, making the bed, washing dishes and folding laundry are difficult and slower with one arm. The appellant states that he tries to avoid foods that require the use of both a fork and knife and food prep is awkward and slow; mechanical work or yard work requiring both hands is no longer possible. The appellant states that he has lost motivation to do most things for fear of pain and when he is in pain it is difficult to concentrate. The appellant states that he finds he is easily agitated by external factors. The appellant points out that the orthopedic surgeon indicates that his shoulder has developed arthritis as well and that this condition will persist until surgically deal with. The orthopedic surgeon also stated that attempts to reconstruct the shoulder do not have a high enough success rate and could likely make the situation worse. The appellant states that he does not know how he would be able to support a family with this condition.

The physician who completed the physician report indicates the appellant has been his patient for 5 years and that he has seen the appellant 2 to 10 times in the past 12 months. In the physician report, the physician confirms a diagnosis of right AC joint separation (October 2008). In describing the severity of the medical condition relevant to the appellant's impairment, the physician notes "...unable to do right-handed activity due to severe pain when using right arm to advance forward or across body sustains pain that immobilizes." The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require a prosthesis or aid for his impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, that he can climb 2 to 5 steps unaided, that he can lift under 5 lbs. and remain seated for less than 1 hour. The physician indicates that there are no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, motor activity, and attention or sustained concentration ("...in pain"), with no further comments provided. The appellant has

completed part E of the physician's report and responds to the question whether the impairment directly restrict his ability to perform DLA with "yes". The appellant assesses himself as being restricted on a continuous basis with personal self care ("washing, shaving, brushing teeth"), meal preparation ("washing, cutting, moving dishes/pots"), basic housework ("sweeping, mopping, laundry, making bed"), daily shopping ("cannot carry items"), and social functioning ("cannot shake hands, hug or cuddle, play or wrestle, play games, recreation activities", "physical interactions limited due to pain"), as well as restricted on a periodic basis with use of transportation ("OK as passenger", "cannot support self on bus or hold steering wheel"). The appellant assesses no restrictions with management of medications, mobility inside and outside the home, and management of finances. For comments regarding the degree of restriction, the appellant has noted "...cannot use right arm, and therefore all two hand activities" and for assistance with DLA comments "...clavicle brace for light work- laundry, dishes; sling to restrict movement to avoid pain; requires assistance to compensate for lack of ability."

The physician also prepared the assessor report and indicates that the appellant has a good or satisfactory ability to communicate in all areas with the exception of writing which is poor ("right handed"). The physician indicates that the appellant is independent with walking indoors and walking outdoors, that he uses an assistive device ("clavicle brace") for climbing stairs and is independent with standing, while requiring continuous assistance from another person with lifting and carrying and holding ("can't use right lower extremity"). The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, and with transfers in/out of bed and transfers on/off chair, but takes significantly longer than typical. The physician reports that the appellant uses an assistive device ("clavicle brace") for doing laundry and is independent but takes significantly longer than typical with basic housekeeping ("uses left hand"). The physician indicates that the appellant is independent with most tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, while using an assistive device ("backpack") for carrying purchases home. Additional comments are that "...lots of two-handed tasks not possible, right handed so slow with left." The physician reports that the appellant is independent with all of the tasks of managing meals, including meal planning, while taking significantly longer than typical with food preparation, cooking and safe storage of food. The physician indicates that the appellant is independent with all tasks of paying rent and bills including banking and budgeting, while taking significantly longer to pay rent and bills ("hard to find employment"). For managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage), the physician has noted "N/A", or not applicable. The physician reports that the appellant is independent with managing transportation while taking significantly longer than typical with getting in and out of a vehicle ("needs assistance") and using public transit ("weaving through crowds uses arms"). The physician adds a comment regarding the nature and extent of the appellant's impairment that "...the condition restricts ability to perform ADL; requires clavicle brace to assist with light weight activities; impairment is severe because of how it limits patient's motion and activities."

The physician reports there are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion ("depression"), motivation ("can't do due to pain") and motor activity, as well as moderate impacts in bodily functions ("wash and hygiene uses left arm"), attention/concentration ("can't focus due to pain"), and other emotional or mental problems ("hostile"), and additional comments that the appellant has "...neck cramping due to head tilt; difficult to concentrate." The physician assesses no impact on the remaining 7 areas of functioning. In the section of the report to assess social functioning, the physician has noted "N/A", or not applicable. For additional information regarding assistance needed, the physician notes "...cannot do two-handed activities: mopping/sweeping/folding laundry/make bed/mow lawn/rake leaves/washing dishes, scrubbing is difficult ...to support body and scrub at same time."

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry points out that in terms of physical functioning, the physician indicates in the original PWD application that the appellant is able to walk 4 or more blocks and to climb 2 to 10 steps unaided, to lift less than 5 lbs. and to sit for less than 1 hour, and a clavicle brace is used. The ministry argues that the functional skill limitations are not significantly restricted aside from lifting with the right arm. The ministry argues that the orthopedic surgeon reported that remedial measures in form of surgery are available and, until that time, manual labour cannot be done without pain. The ministry also argues that as the appellant's limitation is due to symptoms of pain and there are remedial measures available in the form of analgesics, the evidence is not sufficient to show a severe physical impairment. At the hearing, the ministry pointed out that it must be satisfied on all the evidence available of a severe physical impairment, and that involves an assessment of what the appellant can do as well as what he cannot.

The appellant argues, through his advocate, that the decision in *Hudson v. EAAT*, 2009 BCSC 1461 is authority for the position that any ambiguity in the interpretation of the EAPWD legislation must be resolved in favour of the applicant and since the term 'severe' is capable of a range of meanings, the applicable interpretation is that which is the easiest to satisfy. The appellant argues that he has a severe physical impairment as a result of his right AC joint separation and that this condition is described by his physician in the assessor report as being "severe." The appellant argues that the physician has stated in the physician report that the appellant is unable to do any right-handed activity due to his condition and points out that the functional skill assessment for walking is not relevant to his type of medical condition because it affects his arm, not his legs. The appellant also argues that the physician reported that, due to pain, the appellant has major impacts in three areas of cognitive and emotional functioning. The appellant points out that in the physician assessed that 15 of the 28 daily living activities (DLA) listed take significantly longer than typical and, in his letter dated August 10, 2012, that these take 3 to 5 times longer than typical. The appellant argues that the physician confirmed that the appellant requires continuous assistance with at least some of the DLA due to the additional time required to complete each activity and, based on this level of functioning, the appellant suffers from a physical impairment that is severe.

The panel finds that the evidence of a medical practitioner has confirmed a diagnosis of right AC joint separation. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment "...unable to do right-handed activity due to severe pain when using right arm to advance forward or across body sustains pain that immobilizes." The physician reports that the appellant has not been prescribed medications or treatments that interfere with his ability to perform DLA and he does not require aids for his impairment. In the physician report, the physician indicates that the appellant can walk 4 or more blocks unaided on a flat surface, that he can climb 2 to 5 steps unaided, that he can lift under 5 lbs. and remain seated for less than 1 hour. In the assessor report, the physician indicates that the appellant is independent with walking indoors and walking outdoors, that he uses an assistive device ("clavicle brace") for climbing stairs and is independent with standing, while requiring continuous assistance from another person with lifting and carrying and holding ("can't use right lower extremity"). In his self-report included in the PWD application, the appellant states that the ligament in his right shoulder is so severely damaged that movement displaces the clavicle and this is extremely painful and even during inactivity the pain will persist for hours. The appellant also points out that the orthopedic surgeon indicates that his shoulder has developed arthritis as

well and that this condition will persist until surgically deal with. In a letter dated June 27, 2011, the orthopedic surgeon states that he thinks "...this will be an ongoing disability until it is surgically dealt with; he will be unable to do manual labour without pain unless corrected." Later, in a Medical Report- Employability dated November 9, 2011, the same orthopedic surgeon describes the appellant's overall medical condition as "moderate" as opposed to mild or severe and the associated restrictions as: "...pain in right shoulder with strenuous or repetitive, max. 5 lbs. at this time." Several months later, the same orthopedic surgeon completed a Medical Report- PPMB dated February 17, 2012 and provides a prognosis of an expected duration of the medical condition as 2 years or more "without treatment" and restrictions described as "...can't do anything strenuous with right shoulder, can't lift more than 5 lbs., can't do overhead activities." At the hearing, the appellant stated that it has been a long time since his injury occurred, and the orthopedic surgeon has discussed 10 different surgery options but none are reliable, that the surgeon has said attempts to re-construct the shoulder do not have a high enough success rate and could likely make the situation worse.

Based on the evidence from the appellant's physician and the orthopedic surgeon, the panel finds that the ministry reasonably concluded that the functional skills limitations are not significantly restricted aside from lifting and carrying and holding with the right arm, and that all of the areas of functioning are to be considered in assessing the appellant's relative level of physical impairment. The appellant's family physician reported that his impairment is severe "...because of how it limits patient's motion and activities", and the panel finds that this relates to the use of the appellant's right arm. The orthopedic surgeon, who is a specialist in the appellant's injury, has referred to surgery and treatment in his reports and there was no direct evidence provided from him to indicate that surgery or some other form of treatment is not recommended in the appellant's case. Although the appellant has stated that he was told by the orthopedic surgeon that surgery could likely make the situation worse, the panel finds that the appellant has stated that many options have been discussed with the surgeon over the years, which involves a process of weighing the risks with the possible benefits to different procedures, and that the ministry was reasonable in placing more weight on the last available evidence from the orthopedic surgeon on this issue. The panel finds that the evidence currently available demonstrates that the appellant had an injury in 2008 which caused the separation of his AC joint, that no surgery or treatment has been pursued by the appellant to date and there are currently restrictions to the appellant's physical ability with his right arm. The advocate also argues that the physician reported that, due to pain, the appellant has major impacts in three areas of cognitive and emotional functioning and the panel finds that the ministry reasonably concluded that there are remedial measures, including analgesics, treatments, and surgery, designed to alleviate pain from an injury and that the current level of pain experienced is one factor to be considered in weighing the risks and benefits to pursuing a particular option. Therefore, the panel finds that the ministry's determination that the evidence currently available does not establish a severe physical impairment was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reports deficits to cognitive and emotional functioning in the areas of emotional disturbance (depression), motivation, motor activity and attention/concentration (in pain), and that impacts on daily functioning are mostly moderate with major impacts on emotion (moderate to major), motivation and motor activity and there are a number of aspects with no impact. The ministry argues that the physician relates some of the impacts to physical factors, i.e. uses left arm to wash/hygiene, pain causes impact, etc. and this section of the report is intended for applicants with an identified mental impairment or brain injury and physical factors are not relevant to this assessment. The ministry argues that continuous restriction to social functioning is described as "...cannot shake hands without pain" and "physical interactions limited due to pain" which description does not support a finding of a continuous restriction.

The appellant, through his advocate, argues that he has a severe mental impairment as a result of depression, referred to by the appellant's physician both in the assessor report and described as 'severe' in his letter dated August 10, 2012. The appellant points out that his physician reports in the August 10, 2012 letter that the appellant has continuous severe social functioning restrictions resulting from hostility difficulties and depression, that his ability to develop and maintain relationships and to interact appropriately with others is

severely and continuously restricted.

The panel finds that the evidence of a medical practitioner, in the letter dated August 10, 2012, confirms a diagnosis of depression and that this condition is likely to continue for at least two years, and that this condition was previously referred to by the physician in the PWD application. In the physician report, the physician indicates that there are no difficulties with communication. The physician reports that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, motor activity and attention or sustained concentration ("in pain"). In the assessor report, the physician indicates there are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion ("depression"), motivation ("can't do due to pain") and motor activity, as well as moderate impacts in bodily functions ("wash and hygiene uses left arm"), attention/concentration ("can't focus due to pain"), and other emotional or mental problems ("hostile"), and additional comments that the appellant has "...neck cramping due to head tilt; difficult to concentrate." The physician assesses no impact on the remaining 7 areas of functioning. In the physician report, the appellant assesses himself as being restricted on a continuous basis with social functioning ("cannot shake hands, hug or cuddle, play or wrestle, play games, recreation activities", "physical interactions limited due to pain") while, in the section of the assessor report to evaluate social functioning, the physician has noted "N/A", or not applicable. In his August 10, 2012 letter, the physician has changed his assessment to indicate that the appellant has "...continuous severe social functioning restrictions resulting from hostility difficulties and depression", however there is no explanation provided by the physician for this change, whether an error was made in the assessor report or the appellant's condition has markedly deteriorated in the 3 months since then. The panel finds that the ministry reasonably concluded that the description provided by the appellant for the restriction to his social functioning relates to his experience of pain and not due to the impacts from a mental impairment. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry points out that it is reported in the physician report that there are continuous restrictions to personal self care, meal preparation, basic housekeeping, daily shopping and social functioning (cannot shake hands without pain, physical interactions limited due to pain), and the restriction is described as "cannot use right arm and therefore all two-hand activities" but in the assessor report the physician indicates that all DLA are performed independently and that support/supervision for social functioning is not applicable. The ministry points out that some tasks take longer to perform, that how much longer is not described, and that modifications are required to accomplish the tasks, i.e. eats differently/less preparation, manoeuvres when transferring, etc. but the majority of DLA are performed independently, with or without modifications to perform.

The appellant argues, through his advocate, that the evidence of his family physician establishes that he is directly and significantly restricted in his ability to perform his DLA continuously. The advocate pointed to the statement by the physician in his August 10, 2012 letter that the appellant is directly and significantly restricted in his ability to perform DLA as a result of his medical conditions. The advocate argues that the appellant requires continuous assistance with the tasks for which he takes significantly longer than typical due to the accumulation of the additional time to complete essential DLA. The appellant argues that his physician states in the assessor report that his condition restricts his ability to perform ADL (activities of daily living). The appellant referred to the court decision in Hudson as authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA and that there is no statutory requirement that more than two DLA be restricted.

The panel finds that the legislation requires that the ministry must be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. The panel places more weight on the direct evidence of the physician in the assessor report, which includes the physician's own elaborating narrative respecting DLA,

where it conflicts with the evidence in part E of the physician report which was completed by the appellant. In terms of preparing his own meals, the appellant indicated in the physician report that he is restricted on a continuous basis in the area of meal preparation ("washing, cutting, moving dishes/pots") and, in the assessor report, the physician indicates that the appellant is independent with all tasks, while taking significantly longer with food preparation, cooking, and safe storage of food (3-5 times longer). In his self-report included with the PWD application, he appellant states that he tries to avoid foods that require the use of both a fork and knife and food prep is awkward and slow. For managing personal finances, the appellant indicated, in the physician report, that he is not restricted and, in the assessor report, the physician reports that the appellant is independent with all tasks of paying rent and bills including banking and budgeting, while taking significantly longer to pay rent and bills ("hard to find employment").

In terms of shopping for his personal needs, the appellant indicated that he is continuously restricted in this area and comments "...cannot carry items." In the assessor report, the physician indicates that the appellant is independent with most tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases, while using an assistive device ("backpack") for carrying purchases home. For use of public or personal transportation facilities, the appellant indicates, in the physician report, that he is restricted on a periodic basis in this DLA and, in the assessor report, the physician indicates that the appellant is independent with managing transportation while taking significantly longer than typical with getting in and out of a vehicle ("needs assistance") and using public transit ("weaving through crowds uses arms"). At the hearing, the appellant explained that he cannot perform activities that require two arms, that he could use public transportation and hold on with his left hand but then he would not be able to protect his right arm or use his right arm if needed. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the appellant indicated, in the physician report, that he is continuously restricted and, in the assessor report, the physician reports that the appellant uses an assistive device ("clavicle brace") for doing laundry and is independent but takes significantly longer than typical with basic housekeeping ("uses left hand"). In his self-report, the appellant states that activities like sweeping, mopping, making the bed, washing dishes and folding laundry are difficult and slower with one arm.

For moving about indoors and outdoors, the appellant reported that he is not restricted with mobility and, in the assessor report, the physician indicates that the appellant is independent with walking indoors and walking outdoors, that he uses an assistive device ("clavicle brace") for climbing stairs and is independent with standing. Regarding performing personal hygiene and self care, the appellant indicated that he is continuously restricted with personal self care ("washing, shaving, brushing teeth") and, in the assessor report, the physician indicates that the appellant is independent with all tasks, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chair, while taking significantly longer than typical (3 to 5 times longer) with these tasks. With respect to managing his personal medications, the appellant indicated that he is not restricted and, in the assessor report, the physician reports that this is not applicable to the appellant. For making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively, the physician reported no requirement for support or supervision in the assessor report while stating in his August 10, 2012 letter that the appellant's ability to interact appropriately with others is severely and continuously restricted. The panel finds that the appellant's comments regarding social functioning, that he "...cannot shake hands, hug or cuddle, play or wrestle, play games, recreation activities" and that "physical interactions limited due to pain" do not indicate restrictions due to a mental impairment and are of a physical rather than social nature.

The panel finds that the appellant reported that he is restricted in 6 out of 10 areas of DLA and noted, with respect to the degree of restriction, that "...cannot use right arm and therefore all two-hand activities." However, the physician assessed the appellant as independent and not requiring assistance with almost all of his DLA, with the exception of two tasks for which he requires an assistive device. The panel finds that the ministry reasonably determined that the appellant is able to perform most tasks of DLA with modifications to accommodate the restrictions to use of his right arm. The appellant argues that there is no statutory

requirement that more than 2 DLA be restricted, however the panel finds that the ministry reasonably determined that the evidence does not establish a direct and significant restriction on a minimum of two DLA on either a continuous basis or periodically for extended periods of time. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel notes the information from the physician and the appellant that he receives assistance from his family, friends, volunteers and community service agencies and he uses a clavicle brace and a sling as assistive devices. As it has not been established that the ability to perform DLA is significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.